UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

SARAH P., Plaintiff,	)	
v.	)	No. 1:22-cv-313-MSM
KILOLO KIJAKAZI, Acting Commissioner, Social Security Administration, Defendant.	)	

MEMORANDUM & ORDER

Mary S. McElroy, United States District Judge.

Sarah P. is a 46-year-old woman who has experienced severe headaches since she suffered a traumatic brain injury at the age of six.[1] At the age of 14, she passed out at a school dance and woke up in a hospital, having lost the ability to walk and talk as well as her memory. She was hospitalized for three months with what she believed was diagnosed as a major TIA.[2] (ECF No. 5-2, 48.) In 2019, at the age of 42,

[1] Medical records from a neurology visit on November 3, 2015, noted corroboration of a hospitalization at age six due to a head injury in a waterpark. (ECF No. 5-8, 928.)

[2] A TIA is a transient ischemic attack. https://www.merriam-webster.com/dictionary/TIA. Clearly, Sarah's understanding of what happened to her is a lay person's and because the event was well before the claimed disability onset date, it is not strictly integral to her disability decision. No matter what the precise medical diagnosis was, however, her recounting of her childhood brain events sets out a context that demonstrates that her more recent experience of debilitating headaches is not of sudden etiology.

she applied for Social Security Disability Insurance ("SSDI") and Supplemental Security Income ("SSI"), alleging an onset of disability date of March 29, 2014. Ultimately, after an internal Social Security Administrative denial, the Administrative Law Judge ("ALJ") denied disability benefits, finding her not disabled. *See ALJ Decision,* ECF No. 5-2, 15-38.

Sarah's major complaint is that she suffers from debilitating migraine headaches which leave her unable to function for lengthy periods of time several days per week and therefore unable to work.[3] Explained in more detail below, she testified that she suffers from "[e]xtreme head pain" on average more than 4 times per week (about 18 times per month), lasting two to four hours at a time and requiring her to lie down until the episode passes. (ECF No. 5-2, 64-65.) On top of these episodes which she characterized as "migraines," she experiences frequent milder headaches and, once or twice per month, "really bad" TIAs when she cannot get out of bed. (ECF No. 5-2, 76-77.)

Sarah's other physical impediments are many. The ALJ accepted her previous diagnoses of celiac condition, thyroid disorder, rheumatoid arthritis, obesity and conjunctivitis.[4] In addition, she suffers from myriad mental health conditions,

[3] Sarah had worked for about five years, from 2005 to 2009, as a support person at state-run group homes. After that employment, she had tried to deliver pizzas in 2015, but she was fired after one day because she could not make it accurately to people's homes. (ECF No. 5-2, 60-61.)

[4] The ALJ ruled that because these conditions "cause minimal symptoms, they are considered to be non-severe impairments." Because a remand is required based on the ALJ's failure to demonstrate an accurate understanding of the evidence of debilitating migraines, his rulings with respect to other conditions need not be

including what the ALJ characterized as "severe" bipolar disorder, depressive disorder, anxiety disorder, impulse control disorder, attention deficit hyperactivity disorder, learning disorder, memory loss status post TIA. (ECF No. 5-2, 21.) He acknowledged that these conditions "significantly limit [her] ability to perform basic work activities" but ultimately concluded that while they stopped her from resuming her previous work as a personal attendant, they did not preclude her employment in such jobs as housekeeping cleaner, kitchen helper, hand packer, dining room attendant, and deli cutter. (ECF No. 5-2, 32.) For that reason, the ALJ concluded that Sarah was not disabled.

The ALJ appropriately followed the analytic steps required by his level of review. The five-part process is well-established.

> The ALJ must follow five steps in evaluating a claim of disability. *See* 20 C.F.R. § 404.1520(a). First, if a claimant is working at a substantial gainful activity, the claimant is not disabled. *Id.* § 404.1520(a)(4)(i). Second, if a claimant does not have any impairment or combination of impairments that significantly limit physical or mental ability to do basic work activities, then the claimant does not have a severe impairment and is not disabled. *Id.* § 404.1520(a)(4)(ii). Third, if a claimant's impairments meet or equal an impairment listed in 20 C.F.R. Part 404, Appendix 1, the claimant is disabled. *Id.* § 404.1520(a)(4)(iii). Fourth, if a claimant's impairments do not prevent doing past relevant work, the claimant is not disabled. *Id.* § 404.1520(a)(4)(iv). Fifth, if a claimant's impairments (considering RFC, age, education and past work) prevent doing other work that exists in the local or national economy, a finding of disabled is warranted. *Id.* § 404.1520(a)(4)(v). Significantly, the claimant bears the burden of proof at Steps One through Four, but the Commissioner bears the burden at Step Five. *Sacilowski v. Saul*, 959 F.3d 431, 434 (1st Cir. 2020); *Wells v.*

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addressed. On remand, the ALJ is free when reconsidering the migraine issue to reevaluate his conclusion about the cumulative impact of all Sarah's impairments.

Barnhart, 267 F. Supp.2d 138, 144 (D. Mass. 2003) (five step process applies to DIB claims).

James F. v. Kijakazi, No. C.A. No. 22-230JJM, 2023 WL 3223790, at *2 (D.R.I. May 3, 2023).

In reviewing the record, "[t]he findings of the Commissioner of Social Security as to any fact, if supported by substantial evidence, shall be conclusive…." 42 U.S.C. § 405(g). Questions of law are reviewed de novo. *Seavey v. Barnhart*, 276 F.3d 1, 9 (1st Cir. 2001) (citing *Ward v. Comm'r Soc. Sec.*, 211 F.3d 652, 655 (1st Cir. 2000)).

Although Sarah testified to many years of suffering from myriad physical and mental health conditions, the most debilitating were her headaches, and it is on that complaint that this Court focuses. Because in the Court's opinion the ALJ may have misunderstood the thrust of Sarah's testimony, and failed to find her disabled as a result, the matter must be remanded for reconsideration.

A close reading of Sarah's testimony, as well as the medical records after the onset date, reveals that she categorized her headaches in three separate types.[5] The most severe were the migraines, which were described as "hemiplegic migraines."[6]

[5] Her counsel, recognizing the three different ways Sarah described her head pain, perceives them as "different levels of head pain severity rather than distinct impairments" and thus considers them collectively. (ECF No. 9, at 6 n.1). That makes sense with respect to the aggregate impact of the generic "headaches." But as explained below, the Court perceives that the failure of the ALJ to consider the migraines severely debilitating and precluding gainful employment was at least partly because of the failure to compartmentalize the "type" of head pain; thus, when Sarah testified to the infrequency of "TIA's," for example, the ALJ erroneously associated that infrequency with "migraines."

[6] The ALJ's decision did not supply a definition of "hemiplegic migraines," but like the First Circuit, we turn to extrinsic definitions from authoritative sources in the

Sarah described these episodes as follows: "I can't see. I get little [sic] blurriness in my eyes. I don't feel very good. I feel kind of weak." "[I have] horrible light sensitivity." (ECF No. 5-2, 65.) She described having to lie down in a dark room and simply rest until the episode passes, a duration of "two to four hours each." (ECF No. 5-2, 64-65.) Sarah's migraines are treated by her primary care physician, Dr. Monica Gross, with whom she has been treating for many years, and who she sees four or five times per year. She has been consistently prescribed medication for these migraines but made it clear that while the medication helped, it neither prevented the episodes nor reduced their frequency. (ECF No. 5-2, 64-65.) The claimed frequency of these episodes, in which all she could do was sleep, was consistent with her description to the ALJ that a typical day included a nap, sleeping if she had a migraine. (ECF No. 5-22, 74.)

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field. *See Ovist v. Unum Life Ins. Co. of Amer.*, 14 F.4th 106, 109-16 n. 3-5, 7-8 (1st Cir. 2021), citing for definitional purposes material from the websites of the Mayo Clinic, the National Institutes of Health, Johns Hopkins Medicine, the Massachusetts General Hospital, and the University of California at San Francisco Health. *See also, United States v. Decoteau,* 525 F. Supp. 3d 268, 270 n. 4 (D. Mass. 2021) (citing Mayo Clinic website explanation of symptoms of COPD). Hemiplegic migraines are "characterized as migraine with weakness or paralysis on one side of the body, which can affect the face, arm, leg or all down one side. This weakness can occur as part of the aura phase and can last from around half an hour, before the headache begins, through to several days." National Migraine Centre, https://www.nationalmigraine center.org.understanding-migraine/factsheets-and-resources/hemiplegic-migraine/. "Hemiplegic migraine is a rare subtype of migraine with aura, characterized by the presence of motor weakness as aura manifestation. The motor weakness is often accompanied by other forms of aura, like impairment in vision, speech, or sensation." National Institute of Health, National Library of Medicine, https://www.ncbi.nlm. nih.gov/ books/NBK513302/ (updated July 14, 2022). The symptoms Sarah described are consistent with these definitions.

A second type of headache is what Sarah referred to as "TIA's." She does not get them very often she testified, perhaps one or two per month, but when she does, "sometimes [she doesn't] get out of bed." (ECF No. 5-2, 76.) Finally, she gets what she refers to simply as "headaches." Medical records as far back as December 2, 2014, record her as reporting "complicated migraine[s]" (ECF No. 5-8), as do records from 2016 (ECF 5-12). That she considers these different types of pain is evidenced by the number of records in which she refers to them as *either* migraines, headaches or TIA's. *E.g.*, records from MedOptions of June 2, 2015, reporting "f/u of migraines, no recent headaches"; records from Kent Hospital ER of Dec. 19, 2018 "patient with a hx of migraines that result in TIA,s [sic] c/o having one last Friday and having a headache x5 days now, that won't go away." On that day, she reported left-side weakness that resolved after about three hours, leaving a "headache" persisting; that "headache is similar to prior migraines but is lasting much longer than her typical migraine." She described these different events to Saima Chaudhry, M.D., of the Neurology Foundation at Brown University's Alpert Medical School: "located unilaterally on her head (can alternate sides), is throbbing in quality, and associated with photophobia, phonophobia, nausea, visual aura, and sometimes gets garbled speech with this and other times gets, hemibody weakness (she calls the hemibody weakness plus headaches TIAs.')." These occurred at least three times per week, "triggered by flashing lights, stress, food." The second type is a "vice-like headache, [with] upper back tightness," occurring about 12 times per month. (ECF No. 5-14). Sometimes Sarah characterized the different types of head pain by the medication

she took for them. Some – the ones that occurred three or four times per week -- were "Excedrin migraine[s]." (ECF No. 5-14). Dr. Chaudhry confirmed that Sarah experienced different types of pain:

> The patient's clinical symptoms this visit appear consistent with a mixed type headache disorder including chronic migraine headaches with a complex component (unilateral head pain, throbbing in quality, associated with photophobia, nausea, visual auras, garbled speech, and at times hemibody weakness - this is reminiscant [sic] of a hemiplegic migraine and are less frequent per parient [sic]) and tension type head pain (vice like head pain with upper back tenderness).[7]

Id. Sarah was sometimes imprecise in describing the different types of headaches, but she clearly distinguished between the types: explaining to a provider that she had just started a new migraine medication, she reported, "These headaches don't prevent me from doing things but they are bad; the migraines prevent me from doing things." She described tension headaches that turned into "overall head pain." A later note in this series reports that the tension headaches had decreased in number, and the migraines, while continuing, had decreased some. *Id.*[8]

The medical records here "'show the existence of a medical impairment . . . which could reasonably be expected to produce the pain . . . alleged . . .'" *Avery v.*

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[7] Sarah described her symptoms similarly to another provider, Dr. Vincent Varamo, at Kent Hospital. She said they included nausea, vomiting, and abdominal achiness. (ECF No. 5-9, 936.) On that occasion, she was seen for a 5-day headache that "won't go away." *Id.* at 933. That episode also included left-side weakness that persisted for several hours. *Id.* at 936.

[8] The medications she took varied with the type of headache. Sumatriptan was prescribed to try to abort migraines; topiramate was taken daily at bedtime to try to prevent them altogether. *Id.* It appeared that stress migraines could be treated with nasal spray Imitrex when unresponsive to Excedrin or Tylenol. (ECF No. 5-8.)

Sec'y of Health and Human Serv., 797 F.2d 19, 20-21 (1st Cir. 1986) (quoting 42 U.S.C. § 423(d)(5). The ALJ, however, found, despite Sarah's testimony about suffering migraines which required her to take to her bed for hours at a time, several times per week, that her symptoms were minimal and that her condition was a non-severe" impairment. In doing so, he grouped together and treated as one condition her migraines, her tension headaches, and her stress headaches. He addressed only migraines in his decision, failing to discuss the continuing persistent headaches. Second, he declared in his decision that a migraine in December 2018 was her first significant one in four years, (ECF No. 5-2, 21), apparently referring to her 2014 hospital admission. (ECF No. 5-8.) It was not the case, however, that the migraines had stopped as early as 2014 and not resumed until 2018. As noted below, complaints of migraines continued throughout 2015 and into 2016. The ALJ was also under the misimpression that she had not been treating with a neurologist for several years as of 2018. *Id.* But medical records from 2015 at the Massachusetts General Hospital Cognitive Behavioral Neurology Unit reported that her migraines were "continuing," as was her use of the prescription nasal spray. *Id.* Lifespan records from February 2015 forward reported migraines with dizziness requiring an Imitrex injection that month. A visit on Feb. 23, 2015 recorded a migraine with a pain rating of 10; that note also reflects that Sarah was taking Imitrex by both injection and nasal spray, as well as Excedrin for migraines. (ECF No. 5-12.) A note from that visit indicated continuing migraines "not different from her typical migraines." *Id.* She saw a neurologist at Brown University's Neurology Foundation in November 2015 (ECF No.

5-8, 928.) Then, a note from Feb. 4, 2016, with a neurologist's name attached to it, reported the onset of a "complicated migraine." (ECF No. 5-12, at 1051. The ALJ might have been under the impression she had not had a migraine in four years because she reported at Kent Hospital in December of 2018 that "She has not had anything *like this* for about 4 years," but at the time she was describing a particularly long-lasting migraine accompanied by nausea, vomiting and weakness, "that was worse than ever." (ECF No. 5-9, at 940) (emphasis supplied). At no time did she say, either in that medical visit or in her testimony, that she had had no migraines at all during that four-year period, simply that she had not experienced anything comparable to that very bad episode for four years. In any event, the records show that debilitating migraines were recurring. Even had there been some period of no migraines, records from 2018 forward demonstrated their severity. *E.g.,* ECF No. 5-9 of 12/19/18 (5-day headache, "won't go away", intensity 10); she was back treating with The Neurology Foundation at Brown by early 2021. (ECF No. 5-14.)

In addition, the ALJ seemed to believe that medication alleviated migraines completely. That does not appear to be the case. Sarah said that taking medication "helped" (ECF No. 5-2, at 64), but she never indicated that it helped enough to eradicate the pain that caused her to stay in bed in a dark room for hours at a time, three or four times per week. The ALJ referred to a record from Dr. Susan Weinman, M.D. that indicated medication had dispelled recent "headaches," but again Sarah made clear that she considered "headaches" differently from "migraines," and nothing in the Weinman note indicated that the *migraine* medication caused them to

disappear. Obviously, they hadn't, as medical reports from 2018 on are replete with references to current episodes.

The ALJ found that Sarah's symptoms could reasonably have been caused by her medically determinable impairments, but he characterized her statements "concerning the intensity, persistence and limiting effects of these symptoms [as] not entirely consistent with the medical evidence." (ECF No. 5-2, 25.) His decision, however, fails to identify what symptoms he believed were "not entirely consistent" with the medical evidence and it did not specifically address, much less discredit, her claim that for several hours per day, several days per week, she was incapacitated by migraine headaches. The only putative inconsistency addressed concerned the four-year period between 2014 and 2018 discussed above, which the Court believes the ALJ may have mistakenly viewed as a period of no migraines at all.

A misunderstanding of material evidence renders inconclusive any findings of fact dependent on that evidence. *Scovel v. Berryhill,* No. 1:16-cv-456-JAW, 2017 WL 2963372, at *5 (D. Me. July 12, 2017), *adopted* 2017 WL 3711559 (Aug. 28, 2017). The ALJ's apparent misunderstanding of Sarah's symptoms may have caused his failure to apply the relevant diagnostic criteria. Social Security Ruling 19-4p, effective Aug. 226, 2019 and entitled "Titles II and XVI: Evaluating Cases Involving Primary Headache Disorders," specifically instructs on the evaluation of headaches. 84 Fed. R. 165, at 44667. It recognizes different types of headache disorders, including "migraine headaches, tension-type headaches, and cluster headaches." The Ruling was based on the previous year's publication by the International Headache

Society of the third edition of the International Classification of Headache Disorders (ICHD-3). The Ruling then lays out the process for determining whether a headache disorder constitutes a medically determinable impairment of a primary headache disorder. A primary disorder is one that is not caused by another medical condition, whereas "secondary headaches are symptoms of another medical condition such as fever, infection, high blood pressure, stroke, or tumors." *Id.* at (1). It includes a description of migraines with and without aura that mirror Sarah's description of visual symptoms as well as nausea, vomiting and light sensitivity.

The ALJ's decision includes only a brief reference to migraines or other headache disorders:

> In December of 2018, the claimant had her first significant migraine headache in four years, and had not been treating with a neurologist for several years (See Ex. B18F). Her vision was consistently normal and/or intact as well (See Ex. B3F, B7F, B10F, B12F, B13F, B18F, B20F, B21F). Because the claimant's celiac condition, thyroid disorder, rheumatoid arthritis, obesity, migraines, and conjunctivitis, by themselves, cause minimal symptoms, they are considered to be non-severe impairments. The undersigned considered all of the claimant's medically determinable impairments, including those that are not severe, when assessing the claimant's residual functional capacity.

(ECF No. 05-2, at 21.)[9] The decision includes no reference to either the ICHD or SSR 19-4p. An ALJ decision need not cite a particular Ruling if the reasoning of the

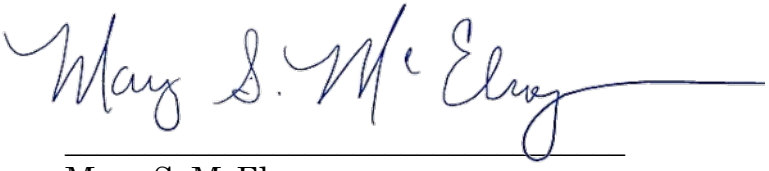
[9] As noted above, the Court believes the 4-year "gap" in migraines reflects a misunderstanding on the part of the ALJ. In addition, his decision subsequently notes a June 2, 2015, record notation from neurologist Susan Weinman, M.D., that on that date Sarah "denied any recent headaches," but "recent," being undefined, could mean days, weeks or months. Whatever Dr. Weinman understood "recent" to mean, her diagnoses at that time continued to include migraines and continued to recommend migraine-strength medications as well as Imitrex for severe migraines. (ECF No. 05-8, at 782-83).

decision indicates that the ALJ "was aware of and applied the Ruling." *Meaghan D. v. Kijakazi*, No. C.A. 22-00033-WES, 2022 WL 10338023, at *8 (D.R.I. Oct. 18, 2022), *adopted by text order* (D.R.I. Nov. 14, 2022).

The Court's role is to review the ALJ's decision, not substitute its own medical assessment. It therefore remands for reconsideration under sentence four of 42 U.S.C. § 405(g), specifically in light of SSR 19-4p. Sarah's description of her symptoms, supported by the medical records, makes relevant the ICHD-3's "diagnostic criteria for migraine without aura": headache attacks lasting at least 4 hours, unilateral location, moderate or severe pain intensity, and nausea or vomiting. SSR 19-4p (4). Specific consideration of SSR 19-4p is warranted.[10]

Therefore, the Court DENIES the defendant's Motion to Affirm (ECF No. 12) and GRANTS the plaintiff's Motion to Reverse and Remand (ECF No. 9) for further administrative proceedings.

IT IS SO ORDERED:



Mary S. McElroy,
United States District Judge

Date: July 21, 2023

[10] A direct reference to the SSR 19-4p criteria would reveal whether the ALJ considered Sarah's migraines a primary or secondary disorder. There is no evidence in the medical records that they were a secondary byproduct of any other condition.